

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:

An Ordinance Relating to
Regulation of Vessels,
Amending Ordinance 3135-09,
Section 14 and Ordinance
1246-86, Section 1 (part) as
Amended (Chapter 12.02.125
and 12.02.130 EMC).

_____ Briefing
_____ Proposed Action
_____ Consent
_____ Action
_____ First Reading
_____ Second Reading
_____ Third Reading
_____ Public Hearing

COUNCIL BILL #
Originating Department
Contact Person
Phone Number
FOR AGENDA OF

CB160524
Legal
Hil Kaman
425-257-8762
May 18, 2016

Initialed by:
Department Head
CAA
Council President

db
AM

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u> Ordinance	<u>Department(s) Approval</u> Legal, Police
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Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

State law has changed since the last update of our ordinance relating to 1) operation of a vessel in a reckless manner, and 2) operation of a vessel while under the influence of intoxicating liquor or drugs, sometimes referred to as Boating Under the Influence.

This proposed ordinance would adopt by reference the Revised Code of Washington (RCW 79A.60.040) relating to operation of a vessel in a reckless manner and operation of a vessel while under the influence of intoxicating liquor, marijuana, or drugs to make this section of the Everett Municipal Code (EMC) consistent with State law. Under State law, operating a vessel in a reckless manner constitutes a misdemeanor, while operating a vessel under the influence constitutes a gross misdemeanor.

Because this proposed ordinance adopts the boating RCW provisions by reference, it will automatically update if there is a change to the RCWs, keeping the EMC consistent with State law.

RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance Relating to Regulation of Vessels, Amending Ordinance 3135-09, Section 14 and Ordinance 1246-86, Section 1 (part) as Amended (Chapter 12.02.125 and 12.02.130 EMC).

ORDINANCE No. _____

AN ORDINANCE Relating to Regulation of Vessels, Amending Ordinance 3135-09, Section 14 and Ordinance 1246-86, Section 1 (part) as Amended (Chapter 12.02.125 and 12.02.130 EMC).

Whereas, in the 2014 legislative session, the State of Washington amended the Boating Under the Influence statute, RCW 79A.60.040, which makes it a misdemeanor/gross misdemeanor to operate a vessel in a reckless manner or while under the influence of intoxicating liquor, marijuana, or any drug; and

Whereas, the Everett City Council deems it appropriate for the city's vessel regulations to be consistent with State vessel regulations;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Section 14 of Ordinance No. 3135-09 (EMC 12.02.125), which reads as follows:

Operation of vessel in a reckless manner—Penalty.

- A. It is unlawful for any person to operate a vessel in a reckless manner.
- B. A violation of this section is a misdemeanor, punishable by up to ninety days in jail and by a fine of not more than one thousand dollars. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense. (Ord. 3135-09 § 14, 2009)

Be and the same is hereby amended to read as follows:

Operation of vessel in a reckless manner—Penalty.

~~A.—It is unlawful for any person to operate a vessel in a reckless manner.~~

~~B.—A violation of this section is a misdemeanor, punishable by up to ninety days in jail and by a fine of not more than one thousand dollars. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.~~

The following section of Washington state law is adopted by reference in all respects, as currently enacted or later amended, as though such section was set forth herein in full:

Chapter 79A.60.040 RCW.

Section 2. Section 1 (part) of Ordinance No. 1246-86, as amended by Section 1 of Ordinance No. 2415-99, as amended by Section 15 of Ordinance No. 3135-09, as amended by Section 2 of Ordinance of Ordinance No. 3337-13 (EMC 12.02.130), which reads as follows:

Operation of a vessel while under the influence of intoxicating liquor, marijuana, or any drug—Penalty.

A. It is unlawful for any person to operate a vessel while under the influence of intoxicating liquor, marijuana, or any drug. A person is considered to be under the influence of intoxicating liquor, marijuana, or any drug if, within two hours of operating a vessel:

1. The person has an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or
2. The person has a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or
3. The person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or
4. The person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

B. The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.

C. Any person who operates a vessel within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of the person's breath or blood for the purpose of determining the alcohol concentration, THC concentration, or presence of any drug in the person's breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of intoxicating liquor, marijuana, or any drug. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood. An arresting officer may administer field sobriety tests when circumstances permit.

D. The test or tests of breath must be administered pursuant to RCW 46.20.308. Where the officer has reasonable grounds to believe that the person is under the influence of a drug, or where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample, or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility, a blood test must be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall warn the person that if the person refuses to take the test, the person will be issued a class 1 civil infraction under RCW 7.80.120.

E. A violation of this section is a gross misdemeanor, punishable by up to three hundred sixty-four days in jail and by a fine of not more than five thousand dollars. In addition to the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

Be and the same is hereby amended to read as follows:

Operation of a vessel while under the influence of intoxicating liquor, marijuana, or any drug—Penalty.

~~A.—It is unlawful for any person to operate a vessel while under the influence of intoxicating liquor, marijuana, or any drug. A person is considered to be under the influence of intoxicating liquor, marijuana, or any drug if, within two hours of operating a vessel:~~

~~1.—The person has an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or~~

~~2.—The person has a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or~~

~~3.—The person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or~~

~~4.—The person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.~~

~~B.—The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section.~~

~~C.—Any person who operates a vessel within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of the person's breath or blood for the purpose of determining the alcohol concentration, THC concentration, or presence of any drug in the person's breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of intoxicating liquor, marijuana, or any drug. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood. An arresting officer may administer field sobriety tests when circumstances permit.~~

~~D.—The test or tests of breath must be administered pursuant to RCW 46.20.308. Where the officer has reasonable grounds to believe that the person is under the influence of a drug, or where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample, or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility, a blood test must be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall~~

~~warn the person that if the person refuses to take the test, the person will be issued a class 1 civil infraction under RCW 7.80.120.~~

~~E. — A violation of this section is a gross misdemeanor, punishable by up to three hundred sixty-four days in jail and by a fine of not more than five thousand dollars. In addition to the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.~~

The following section of Washington state law is adopted by reference in all respects, as currently enacted or later amended, as though such section was set forth herein in full:

Chapter 79A.60.040 RCW.

Section 3. Severability

Should any section, subsection, paragraph, sentence, clause or phrase of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council of the City of Everett hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. General Duty

It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

Section 5. Savings

The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 6. Corrections

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, Ordinance numbering, section/subsection numbers and any references thereto.

Ray Stephanson, Mayor

ATTEST:

City Clerk

Passed:

Valid:

Published:

Effective Date: